

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TRISTAR INVESTORS, INC.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
AMERICAN TOWER CORPORATION, et al.,	§	
	§	
	§	
Defendants.	§	
	§	CIVIL ACTION NO. 3:12-CV-499-M
AMERICAN TOWER, LLC, et al.,	§	
	§	
Counter-Plaintiffs,	§	
	§	
v.	§	
	§	
TRISTAR INVESTORS, INC., et al.,	§	
	§	
Counter-Defendants.	§	
	§	

JOINT SUBMISSION REGARDING MEDIATION

Pursuant to the Court’s May 1, 2013 Order (Doc. #151), TriStar and American Tower file this Joint Submission Regarding Mediation. The parties have been unable to agree on a mediator and respectfully request that the Court select one.

I. TriStar’s Statement

In attempting to agree on a mediator, TriStar suggested that the parties select a mediator from the Dallas JAMS panel. As a starting point for discussion between the parties, TriStar proposed the Honorable Glen M. Ashworth or the Honorable Harlan A. Martin. American Tower refused both of these proposed mediators and suggested two of its own. TriStar declined

to accept the first two mediators proposed by American Tower but stated that it would be open to considering any additional proposals from American Tower. American Tower declined to propose any other potential mediators. Because the parties have not been able to agree on a mediator by the Court's deadline, TriStar respectfully requests that the Court select one.

Further, TriStar respectfully requests that the Court order the Chief Executive Officers of TriStar and American Tower to attend mediation. TriStar believes that mediation will be more effective if the chief decision-maker for each party is present. Permitting the parties to be represented solely by attorneys from their in-house legal departments is less likely to yield fruitful settlement discussions, particularly given how integrally involved the parties' legal representatives have been in this contentious litigation.

II. American Tower's Statement

American Tower believes that this matter should be mediated before the most qualified mediator available, and is happy to have that mediation occur in Dallas. TriStar initially proposed using a mediator from the Dallas JAMS office and then specifically identified two candidates. Given the prominence of the parties' competing antitrust claims and a desire for the mediation to have the best opportunity for success possible, American Tower proposed using Eric Green, a leading mediator with a long track record of mediating significant antitrust disputes around the country such as the *United States v. Microsoft* antitrust case and the MasterCard/Visa merchants' class action antitrust case. See <http://www.resolutionsllc.com/principals.htm>. When TriStar rejected Mr. Green and any other mediator not based in Dallas, insisting that it would only proceed before a mediator located in Dallas, American Tower bypassed other highly-qualified mediator candidates with sterling national reputations, including the Honorable Edward A. Infante (<http://www.jamsadr.com/infante/>) and Jonathan Marks

(http://marksadr.com/marks_bio.html), in favor of a Dallas mediator, Hessa Abrams, with federal antitrust experience. TriStar also rejected that mediator, continued to name only Judges Ashworth and Martin as proposed mediators, and then refused to disclose any information concerning its counsel's prior use of Judges Ashworth and Martin as party-appointed arbitrators or mediators; thus, it became necessary to seek the Court's assistance in the selection process. American Tower and its counsel have not had any prior dealings with its proposed candidates other than Mr. Marks, before whom Mr. Shepherd mediated a single matter many years ago, and Ms. Abrams, before whom Mr. Shepherd mediated a multi-party antitrust matter in 2011.

American Tower continues to believe that the parties are best served by mediating this matter in Dallas before the best mediator available without regard to the location of the mediator's home office.

American Tower agrees with Tristar that each side should have its "chief decision-maker" attend the mediation. While that may mean that TriStar's Chief Executive Officer should attend, American Tower's chief decision maker is one of its five Executive Vice Presidents, Edmund DiSanto, who also serves as the corporation's Chief Administrative Officer and General Counsel. Mr. DiSanto will attend the mediation with full decision making authority necessary to bind the corporation. Unlike TriStar, American Tower is a large publicly traded corporation whose Chief Executive Officer is not intimately involved in the litigation; likewise, Mr. DiSanto has not been integrally involved in these proceedings, has not attended a single deposition or hearing, and, given his authority on behalf of the Company, is as well suited as American Tower's Chief Executive Officer to participate in a mediation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2013, I served a true and accurate copy of the foregoing document on all counsel of record via filing of the same with the Court's CM/ECF system.

/s/ Tyler J. Bexley